

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

STATE OF FLORIDA,

Plaintiff,

v.

No. 3:21-cv-2722-MCR-HTC

DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

**JOINT MOTION TO VACATE FURTHER BRIEFING AND HEARING ON
PRELIMINARY INJUNCTION**

For the following reasons, the parties respectfully jointly request that the Court vacate the further briefing and hearing the Court yesterday ordered on Florida's motion for a preliminary injunction. Florida intends to pursue expeditiously its previously filed appeal from the Court's denial of a preliminary injunction. The parties agree that further district court proceedings on the same motion are unwarranted under these circumstances.

1. On November 17, 2021, Florida moved for a temporary restraining order or preliminary injunction against the CMS vaccination rule, which requires that certain unvaccinated staff of certain health care facilities, as a condition of the facilities' participation in the Medicare and Medicaid programs, either receive their first COVID vaccine dose, or request from their employer an exemption from doing

so, no later than December 6, 2021. On November 20, 2021, this Court entered an order stating: “Florida’s motion for a Temporary Restraining Order or Preliminary Injunction, ECF 2, is **DENIED**.” ECF 6 at 10. The Court added: “Defendants are directed to respond to the Complaint in due course.” *Id.* at 10-11.

On November 23, 2021, Florida noticed an appeal from that order, and the same day moved in this Court for an injunction pending appeal as a prelude to asking the Eleventh Circuit for the same relief. *See* Fed. R. App. P. 8(a)(1)(C). In its motion, Florida indicated that it intended to seek an injunction pending appeal from the Eleventh Circuit no later than Monday, November 29, 2021.

On November 27, 2021, this Court denied Florida’s request for an injunction pending appeal. In the same order, however, the Court “*sua sponte* reinstate[d] Florida’s request for a preliminary injunction,” requested that the government file a written response to Florida’s motion by November 30 at noon, and scheduled an in-person hearing on Florida’s motion to begin at 9 am on December 1. ECF 13 at 5-6.

2. The parties respectfully move to suspend further proceedings in this Court on Florida’s motion for a preliminary injunction pending the Eleventh Circuit’s disposition of Florida’s appeal. Because the Court’s earlier order was denominated as a denial of the motion for a preliminary injunction, and because Florida has taken an appeal from that order, there is at a minimum substantial doubt as to whether this Court has been divested of jurisdiction to reconsider the order. *See Coastal Corp. v.*

Texas E. Corp., 869 F.2d 817, 820 (5th Cir. 1989); *Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. E. Air Lines, Inc.*, 847 F.2d 1014, 1018 (2d Cir. 1988). In any event, Florida intends to move for an injunction pending appeal with the Eleventh Circuit on Monday, November 29, 2021, to give the Court of Appeals an opportunity to rule in advance of the December 6 vaccination deadline set by the rule. Accordingly, the parties jointly request that this Court suspend further proceedings regarding the preliminary injunction motion pending the disposition of Florida’s appeal.

CONCLUSION

For the foregoing reasons, the parties respectfully request the Court to vacate the hearing and further briefing that it ordered on Florida’s motion for a preliminary injunction.

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

Consistent with Local Rule 7.1(B), counsel conferred with Defendants in good faith about the relief requested in this motion. Counsel is authorized to represent that Defendants join in this motion.

CERTIFICATE OF WORD COUNT

Consistent with Local Rule 7.1(F), this motion contains 510 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 2021, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ David M. Costello
Assistant Solicitor General